

## **CHAPTER 6. PROCEDURAL SAFEGUARDS**

### **6.1. Overview**

This chapter provides the process for ensuring the implementation of the safeguards to which each eligible member and family is entitled.

### **6.2 Informed Consent**

Consent in this context means permission from the member/family and ensures that:

- The member/family has received all information in the member/family's native language or mode of communication relevant to the activity for which consent is sought;
- Members/families have been fully informed of their rights and responsibilities applicable under all program laws, rules and procedures;
- Members/families understand and agree in writing to the release of any personally identifiable information;
- Members/families understand that consent is voluntary and may be revoked at any time;
- Members/families have the right to accept or decline any service or intervention without jeopardizing other services; and
- Documentation is present in the member's file that confirms that this information has been provided to the member/family and that the member/family has indicated their understanding of the information.

#### **6.2.1 Consent**

Consent shall be obtained in writing before:

- Conducting evaluation or assessment of the member;
- Initiating the provision of services.

#### **6.2.2 Rights to Decline Services**

Members and families may determine whether they will accept or decline any service and may discontinue any service without jeopardizing other services. If consent is not given, reasonable efforts shall be made to ensure that the member/family:

- Is fully aware of the nature and range of services available to them;
- Understands that the member will not be able to receive services unless consent is given.

### **6.3 Definition of a "Parent"**

A natural or adoptive parent of a child/youth, a guardian or a person acting in the place of a parent of child/youth (such as a grandparent or stepparent with whom the child/youth lives, or a person who is legally responsible for the child/youth's welfare) or a surrogate parent who has been appointed by a court of competent jurisdiction under state law. Under the provisions of 20 U.S.C. 1439, 34 C.F.R. 303.406 and C.F.R. 303.19 ADHS/OCSHCN has procedures in place to protect the rights of a child/youth whenever the child/youth's parent(s) cannot be identified, located, or the child/youth is a ward of the State.

## 6.4 Records

The contractor is responsible for the preservation and management of records. In addition to other powers and duties, the contract administrator shall:

- Establish standards, procedures and techniques for effective management of records in accordance with HIPPA, State, and Federal guidelines.
- Make continuing surveys of record keeping operations and recommend improvements in current record management practices including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing records.
- Establish standards and procedures for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of records no longer possessing sufficient administrative, legal or fiscal value to warrant their further keeping.

Those records determined to be of no legal, administrative, historical or other value shall be disposed of by such method as ADHS/OCSHCN may specify. A report of records destruction that includes a list of all records disposed of shall be filed at least annually with ADHS/OCSHCN on a form prescribed by ADHS/OCSHCN.

The records processes and standards of practice state that the ADHS/OCSHCN TBI/SCI/CYSHCN Program Administration and the ADHS Office of Auditing shall have access to records in order to monitor compliance, conduct necessary evaluations, and perform programmatic review. Under A.R.S. §§35-214 and 35-215, the contractor shall retain, maintain, and store, and shall contractually require each subcontractor to retain, maintain, and store, all records in a safe secure location.

Additionally the contractor shall retain, maintain, and store, and shall contractually require each subcontractor to retain, maintain, and store, all records in a safe secure location for five years after the last date of service. Records may be retained longer as required by the existing legal requirements of the contracting entity. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the contractor shall produce a legible copy of any or all such records.

Records are physically destroyed when the reference activity of the records surpasses five (5) years. Only records required to be retained by Statute or Regulation should be kept beyond Five (5) years. Records must be disposed of on a scheduled basis.

### 6.4.1 Requests for Review of Records

Each contractor shall comply with a member/parent's request to examine, inspect, and review records:

- Without unnecessary delay;
- Within 45 days of the request.

### 6.4.2 Procedures for Record Review

When a member/parent makes a request to examine, inspect, and review records, the following steps will be taken:

- A date and time, that is convenient to the member/parent, will be set up to explain the purpose for which the information in the records shall be used and to provide explanations and interpretations of the records. This may be done:
  - ó At the same time the member/parent is inspecting and reviewing the records;
  - ó Immediately following the member/parent's inspection and review of the records, or at a later date and time.

## **6.5 Corrections to Records**

A member/parent may request to make corrections to information in records which they believe is inaccurate, misleading, or violates the privacy or other rights of the member or family. Each contractor shall decide whether to make the requested corrections to the information in the member's records within a reasonable amount of time, but no later than 45 days, and inform the member/parent in writing of the decision.

## **6.6 Confidentiality**

The confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages shall be protected. Each contractor shall maintain, for public inspection, a current listing of the names and positions of those employees who may have access to personally identifiable information and those other parties who obtained access to the records.

## **6.7 Record Retention**

ADHS/OCSHCN TBI/SCI/CYSHCN Program Administration and ADHS Office of Auditing shall have access to client records in order to conduct necessary evaluations or programmatic review.

- Administrative Records

Under A.R.S. §§35-214 AND 35-215, the contractor shall retain and shall contractually require each subcontractor to retain all data and records relating to the acquisition and performance of the contract for a period of five years after the completion of the contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the contractor shall produce a legible copy of any or all such records.
- Member Records

ADHS/OCSHCN requires the contractor to store and maintain all client records in a safe secure location for five years after the last date of service. Records may be retained longer as required by the existing legal requirements of the contracting entity.
- Termination of Contract

Upon termination of the contract, all administrative documents, data and reports prepared by the contractor under the contract shall be maintained for a period of three years beyond termination. Member's records shall be maintained as outlined above.

## **6.8 Complaints and Grievance Process**

All members/families served through ADHS/OCSHCN TBI/SCI/CYSHCN programs have the right to file a complaint or grieve to the ADHS/OCSHCN TBI/SCI/CYSHCN Family Resource Coordination Program Manager any adverse actions or decisions made by TBI/SCI/CYSHCN or

its contractors. All members/families shall receive an explanation and a copy of the Family Rights and Complaint, Grievance Process; refer to the attached Complaint and Grievance Process procedure and Family Rights and Grievance Process form. This section sets forth the procedures for administrative review, and grievances.

A. Complaint Process

A complaint may be filed with the ADHS/OCSHCN TBI/SCI/CYSHCN Family Resource Coordination Contractor who is serving the member/family. The contractor is required to respond in writing within 15 working days.

- A copy of the complaint and response shall be forwarded to the ADHS/OCSHCN Family Resource Coordination Program Manager.
- If the contract provider does not resolve the complaint, the family may contact the ADHS/OCSHCN Family Resource Coordination Program Manager. Complaints that cannot be resolved by the contractor must be forwarded to the ADHS/OCSHCN Family Resource Coordination Program Manager for a higher-level review within 30 working days:

Arizona Department of Health Services  
Office for Children with Special Health Care Needs  
Program Manager, TBI/SCI/CYSHCN  
Family Resource Coordination Program  
150 North 18<sup>th</sup> Ave Suite 330  
Phoenix, AZ 85007

The ADHS Program Manager will complete review and investigation of the stated issues. ADHS/OCSHCN staff will contact the member or his/her parent/responsible person, medical providers, service providers and/or other pertinent individuals to obtain additional information. Relevant policies will be reviewed and Arizona Department of Health Services management staff will be consulted as necessary. Once the fact-finding is complete, a written decision will be rendered to the member or his/her parent/responsible person. There will be no change in the member's status or the services he/she receives while the review is occurring.

The ADHS/OCSHCN Program Manager will provide a written reply to the complaint within 15 days after the receipt of the complaint. The decision letter upholding or reversing the complaint will be sent to the member/family.

If the member or his/her parent/responsible person wishes to pursue a higher level of resolution of his/her problem/complaint, a request for review can be made. The member or his/her parent/responsible person has 60 calendar days from the date of the initial problem to request a review. The request should be made in writing to:

Arizona Department of Health Services,  
Office for Children with Special Health Care Needs,  
Contract Administrator, TBI/SCI/CYSHCN  
Family Resource Coordination Program  
150 North 18<sup>th</sup> Ave Suite 330  
Phoenix, AZ 85007

The following information must be given:

- Member's name, address, birth date, date of incident;
- Parent/Responsible person's name, relationship and telephone number;
- Family Resource Coordinator's name and telephone number;
- Contractor name;
- Program name; and
- Statement of the nature of the complaint and the action requested.

The ADHS/OCSHCN Contract administrator will provide a written reply to the request for review within 30 days after the receipt of the request for review. The decision letter upholding or reversing the request for review will be sent to the member/family.

#### B. Grievance Process

Within 15 days of an adverse decision by the contract administrator the member/family served by ADHS/OCSHCN may submit a written grievance to the ADHS/OCSHCN Division Chief of Compliance at:

Arizona Department of Health Services  
Office for Children with Special Health Care Needs  
Division Chief of Compliance  
150 North 18<sup>th</sup> Ave Suite 330  
Phoenix, AZ 85007

- The grievance must contain in detail the basis of the grievance;
- ADHS/OCSHCN will keep the family apprized of the progress of the dispute;

The ADHS/OCSHCN Division Chief of Compliance will provide a written reply to the grievance within 30 days after the receipt of the grievance. The decision letter upholding or reversing the grievance will be sent to the member/family.

A higher level formal grievance may be submitted in response to any adverse reply to a grievance filed by the member/family and shall be conducted in accordance with the ADHS/OCSHCN rules of practice and procedure. The following general requirements apply to the formal grievance process:

1. A formal grievance shall be in writing and filed within 15 days of receipt of an adverse reply to a grievance.
2. The formal grievance must contain in detail the basis of the grievance and the relief being requested.
3. All requests for a formal grievance shall be addressed to:

Arizona Department of Health Services  
Office for Children with Special Health Care Needs  
Office Chief  
150 North 18<sup>th</sup> Avenue Suite 330  
Phoenix, AZ 85007